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UNITED STATES DISTRICT COURT
DISTRICT OF ARIZONA

Sean Bennett, an individual,

Plaintiff,

v.

City of Phoenix, a governmental entity;
American Airlines, Inc., a foreign
corporation; Officer Joel Cottrell and Jane
Doe Cottrell, a married couple; Officer
Benjamin Denham and Jane Doe Benham a
married couple; Officer Todd Blanc and
Jane Doe Blanc, a married couple; Officer
Peru and Jane Doe Peru, a married couple;
Sergeant Hogan and Jane Doe Hogan, a
married couple,

Defendants.

No. CV-23-02425-ROS-DME

**CITY OF PHOENIX AND OFFICER
DEFENDANTS' MOTION FOR
RULE 54(b) JUDGMENT**

Honorable Judge: Roslyn O. Silver
Magistrate Judge: Deborah M. Fine

Defendants City of Phoenix (the "City") and Defendants Joel Cottrell, Todd
Blanc, Rudolfo Peru and Ryan Hogan (the "Officer Defendants") respectfully request that this
Court enter a final judgment dismissing the claims against them with prejudice pursuant to
Federal Rule of Civil Procedure 54(b). The Court granted the City and the Officer Defendants'
Motion to Dismiss (the "Motion"), but claims against Defendant American Airlines, Inc.
("American") remain pending. Because the claims against American are enforceable separately

1 from the adjudicated claims and there is no just reason for delay, a Rule 54(b) judgment is
2 proper.

3 **I. BACKGROUND**

4 Plaintiff's claims stem from injuries he allegedly sustained after American
5 personnel asked him to disembark a flight and the Officer Defendants arrested him in the
6 terminal and detained him for a short period. Doc. 1-1 at 6–9. Plaintiff alleged that he
7 disembarked peacefully, but that a flight attendant falsely reported to police dispatch that he
8 was fighting with flight crew and that there was a police emergency. Doc. 1-1 at 5–7. He also
9 alleged that, after exiting the plane, he waited peacefully in the terminal and, when he saw the
10 Officer Defendants arrive, turned himself over. Doc. 1-1 at 7–8. He further alleged that the
11 Officer Defendants nevertheless arrested him and placed him in an airport holding cell.
12 Doc. 1-1 at 8. Finally, he alleged that, once the Officer Defendants were able to conduct an
13 investigation, they discovered that the report to dispatch had been false and released him.
14 Doc. 1-1 at 9.

15 Plaintiff asserted two counts of liability against the City and the Officer
16 Defendants under 42 U.S.C. § 1983. Doc. 1-1 at 10–12. The only basis for these claims against
17 the City was *respondeat superior*. Doc. 1-1 at 10–12. Plaintiff also alleged various state law tort
18 claims against the City, the Officer Defendants, and American. Doc. 1-1 at 12–15. The City
19 and the Officer Defendants moved to dismiss on the grounds that *respondeat superior* did not
20 apply against the City in the context of § 1983 claims;¹ that the Officer Defendants were
21 entitled to qualified immunity on the § 1983 claims; and that, as to the state law tort claims,
22 Plaintiff had failed to comply with Arizona's notice of claim statute, A.R.S. § 12-821.01(A). *See*
23 *generally* Doc. 8. Plaintiff subsequently filed a notice of voluntary dismissal as to all claims
24 against the City. The notice also purported to dismiss the state law tort claims against the
25 Officer Defendants, but the Court construed this part of the stipulation as a partial motion to
26 dismiss. Doc. 20 at 3.

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28 ¹ *See Monell v. Dep't of Soc. Servs. of City of New York*, 436 U.S. 658 (1978).

On April 23, 2024, the Court entered an Order granting the Motion. Doc. 20 at 12. The Court dismissed the City, based on the notice of voluntary dismissal, without prejudice and the Officer Defendants with prejudice. Doc. 20 at 3, 12. In its holding on the State law claims against the Officer Defendants, the Court observed that dismissal for failure to comply with the notice of claim statute must be with prejudice and that, while the Court was not considering Defendants' Motion to Dismiss on this issue in light of Plaintiff's notice/motion, dismissal with prejudice was appropriate because the Officer Defendants could be prejudiced otherwise. Doc. 20 at 4.

II. JUDGMENT IS PROPER UNDER RULE 54(B)

There is no cause to delay entering final judgment for the City and the Officer Defendants. Rule 54(b) provides, in relevant part:

When an action presents more than one claim for relief . . . or when multiple parties are involved, the court may direct entry of a final judgment as to one or more, but fewer than all, claims or parties only if the court expressly determines that there is no just reason for delay.

Whether to enter a judgment under this subsection is left to the sound discretion of the district court. *See Curtiss-Wright Corp. v. Gen. Elec. Co.*, 446 U.S. 1, 8 (1980). Its function is that of “dispatcher,” and it is to exercise its discretion “in the interests of sound judicial administration,” taking into account “judicial administrative interests as well as the equities involved.” *See id.* (citation omitted).

The United States Supreme Court has outlined a two-step analysis for district courts to follow in making Rule 54(b) determinations. *See id.* at 7. First, the district court determines whether “it is dealing with a ‘final judgment,’” that is, whether it has made a “decision upon a cognizable claim for relief” that is “an ultimate disposition of an individual claim” in an action with multiple claims. *Id.* Second, the district court must determine whether there is any just reason for delay. *See id.* at 8. In deciding this question, the district court may “consider such factors as whether the claims under review were separable from the others remaining to be adjudicated and whether the nature of the claims already determined was such

1 that no appellate court would have to decide the same issues more than once even if there
2 were subsequent appeals.” *Id.* at 8.

3 The circumstances of this case and the Court’s Order granting the Motion
4 demonstrate that a Rule 54(b) judgment is appropriate under this analysis. In its Order, the
5 Court dismissed all of Plaintiff’s claims against the City and the Officer Defendants.² [Doc. 20
6 at 12.] The Court’s decision therefore was rendered upon cognizable claims for relief and was
7 the ultimate disposition of the claims against the City and the Officer Defendants. Thus, it is
8 an appropriate final decision on which to enter a Rule 54(b) judgment.

9 There is also no just reason to delay entering judgment in favor of the City and
10 the Officer Defendants. The dismissed claims against them were based on the Officers’ alleged
11 conduct in arresting and detaining Plaintiff and the City’s alleged vicarious liability for the
12 same. This is an entirely separate set of facts from those that underpin his pending claims
13 against American, namely, the conduct of its staff in removing him from the plane and calling
14 police dispatch. In addition, the City’s and the Officer Defendants’ defenses—and the Court’s
15 grounds for dismissing the Officer Defendants—apply only to municipalities and public
16 employees, not to private parties like American. Thus, Plaintiff’s claims against the City and
17 the Officer Defendants are entirely separable from his claims against American and will not
18 present the same issues on appeal. *See Curtiss-Wright Corp.*, 446 U.S. at 8. Moreover, by
19 remaining in this case, the City and Officer Defendants face the ongoing costs of retaining
20 counsel to monitor the case and are delayed in obtaining resolution when their continued
21 presence is not necessary. As the case is in its infancy, with no trial date set on the claims
22 against American, such delay would be onerous and unjust. Administrative and equitable

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24 ² Moreover, while the Court’s Order dismissed the claims against the City without
25 prejudice based on Plaintiff’s notice, dismissal with prejudice is appropriate (1) because the
26 § 1983 claims were premised on *respondeat superior*, which does not apply to a municipality in
27 this context, *see Monell v. Dep’t of Soc. Servs. of City of New York*, 436 U.S. 658 (1978); and
28 (2) because Plaintiff failed to comply with Arizona’s notice of claim statute, A.R.S. § 12-821,
with respect to his State law claims against the City, which are now barred by the one-year
statute of limitations applicable to public entities, A.R.S. § 12-821.01. *See* Doc. 17 at 1–2. With
respect to the State law claims against the City, the same reasoning as the Court employed to
dismiss those claims against the Officer Defendants with prejudice applies, even though its
holding as to the City, like that regarding the Officer Defendants, was not based on
Defendants’ Motion to Dismiss. *See* Doc. 20 at 4.

concerns therefore weigh in favor of a final Rule 54(b) judgment in favor of the City and Officer Defendants, and there is no just reason for delay. *See id.*

III. CONCLUSION

For the foregoing reasons, the City and the Officer Defendants respectfully request that the Court enter final judgment in their favor dismissing Plaintiff's claims against the City and the Officer Defendants with prejudice pursuant to Rule 54(b) and the Court's Order on the Motion.³ A proposed form of judgment is filed herewith.

DATED this 25th day of September, 2024.

JONES, SKELTON & HOCHULI, P.L.C.

By /s/Arcangelo S. Cella

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 Joel Cottrell, Todd Blanc, Rudolfo Peru and
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³ *See supra* note 2.

CERTIFICATE OF SERVICE

I hereby certify that on this 25th day of September, 2024, I caused the foregoing document to be filed electronically with the Clerk of Court through the CM/ECF System for filing; and served on counsel of record via the Court's CM/ECF system.

/s/Karen Gawel

**UNITED STATES DISTRICT COURT
DISTRICT OF ARIZONA**

Sean Bennett, an individual,

Plaintiff,

v.

City of Phoenix, a governmental entity;
American Airlines, Inc., a foreign
corporation; Officer Joel Cottrell and Jane
Doe Cottrell, a married couple; Officer
Benjamin Denham and Jane Doe Benham
a married couple; Officer Todd Blanc and
Jane Doe Blanc, a married couple; Officer
Peru and Jane Doe Peru, a married couple;
Sergeant Hogan and Jane Doe Hogan, a
married couple,

Defendants.

No. CV-23-02425-ROS-DME

FINAL RULE 54(b) JUDGMENT

The Court's April 23, 2024 Order (Doc. 20) granted the Motion to Dismiss (Doc. 8) filed by Defendants the City of Phoenix (the "City"), Joel Cottrell, Todd Blanc, Rudolfo Peru, and Ryan Hogan.

THEREFORE, IT IS ORDERED, ADJUDGED, AND DECREED

(1) dismissing the City from this action with prejudice;

(2) dismissing with prejudice Plaintiff's state-law claims in Counts Three, Four, Five, Six, and Seven as asserted against Officers Joel Cottrell, Todd Blanc, Rudolfo Peru, and Ryan Hogan based on Plaintiff's failure to comply with Arizona's Notice of Claim Statute, A.R.S. § 12-821.01(A); and

(3) dismissing with prejudice Plaintiff's claims under 42 U.S.C. § 1983 in Counts One and Two as against Officers Joel Cottrell, Todd Blanc, Rudolfo Peru, and Ryan

1 Hogan because these Defendants are entitled to qualified immunity as to those claims.

2 **IT IS FURTHER ORDERED, ADJUDGED, AND DECREED** that there
3 is no just reason for delay, and that final judgment is entered under Fed. R. Civ. P. 54(b) in
4 favor of the City and Officers Joel Cottrell, Todd Blanc, Rudolfo Peru, and Ryan Hogan
5 on Plaintiff's claims against them.

6 DATED this _____ day of September, 2024.
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